

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU

&

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 13TH NOVEMBER 2007 / 22ND KARTHIKA 1929

TRC.No. 377 of 2002

TA.953/1990 of S.T.A.T.ADDL.BENCH,ERNAKULAM
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PETITIONER/ REVISION PETITIONER/REVENUE/RESPONDENT:

STATE OF KERALA,
REPRESENTED BY DEPUTY COMMISSIONER (LAW)
COMMERCIAL TAXES, ERNAKULAM.

BY SPL. GOVERNMENT PLEADER SRI. VINOD CHANDRAN

RESPONDENT/ASSESSEE/APPELLANT:

M/S. ERNAKULAM WINES,
ERNAKULAM,
REPRESENTED BY SMT. C.R. MYTHILI,
M/S. ERNAKULAM WINES,
"MYTHILA", VENNALA P.O.,
KOCHI - 25.

(THE CAUSE TITLE OF THE RESPONDENT IS AMENDED
AS PER ORDER ON I.A. NO.2642/07 DATED 13.11.2007).

BY ADV. SRI.K.RAMANATHAN

THIS TAX REVISION CASE HAVING BEEN FINALLY HEARD
ON 13/11/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

H.L. DATTU, C.J. & K. M. JOSEPH, J.

T.R.C. NO. 377 OF 2002

Dated this the 13th November, 2007

ORDER

H.L. DATTU, C.J.

The Revenue, being aggrieved by the orders passed by the Sales Tax Appellate Tribunal in T.A. No.953/90 dated 30.3.2001, is before us in the Tax Revision Case filed under Section 41 of the Kerala General Tax Act (hereinafter, for the sake of brevity, referred to as "the Act").

2. The Revision Case pertains to the assessment year 1987 - 1988. The assessee is doing business in liquor. It had filed its annual return declaring a total turnover of Rs.10,40,643/25 and a taxable turnover of Rs.3,67,933/50.

3. The return so filed by the assessee was not accepted by the assessing authority. Therefore, the assessing authority had called upon the assessee to produce the Books of Accounts and other documents to sustain the return filed by it.

4. After rejecting the return so filed, the assessing authority had proceeded to complete the best judgment assessment and had made certain additions on estimation basis. Aggrieved by the order so passed by the assessing authority, the assessee had filed Appeal before the First Appellate Authority in S.T.A. No.1134/90. The First Appellate Authority by its order dated 9.7.1990, being of the opinion that the estimation so made by the assessing authority is grossly disproportionate to the return filed by the assessee, had modified the assessment by reducing the estimation made by the assessing authority and had also modified the rate of tax that was levied by the assessing authority.

5. The Revenue had carried the matter before the Tribunal against the order passed by the First Appellate Authority. The Tribunal by its order dated 30.3.2001

has rejected the Revenue's Appeal and has confirmed the order passed by the First Appellate Authority which had modified the estimation made by the assessing authority in so far as the taxable turnover of the dealer and also the rate of tax are concerned.

6. Aggrieved by the orders passed by the First Appellate Authority and also the Tribunal, the Revenue is before us in this Tax Revision Case. The Revenue has raised the following questions of law for our consideration and decision:

"1. Were not the Tribunal and the First Appellate Authority in error in not considering the huge discrepancies in stock detected during inspections which would show a clear pattern of suppression ?

2. Were not the Tribunal and the First Appellate Authority in error in not holding that the addition made has reasonable nexus to the suppression detected ?"

7. In the questions of law framed for our consideration and decision, the Revenue has not contended that the findings of the First Appellate Authority and the Tribunal are perverse findings. If the finding of the Tribunal is a perverse finding, in the sense, contrary to the available material on record, that perverse finding can be a question of law which can be agitated by the Revenue before this Court. In the instant case, after rejecting the return filed by the assessee and on estimation basis, the assessing authority had completed the assessment for the assessment year 1987 - 1988. The assessment so made by the assessing authority was modified by the First Appellate Authority and while doing so, the First Appellate Authority has assigned appropriate cogent and relevant reasons. The reasons and conclusions so reached by the First Appellate Authority in modifying the order of assessment passed by the assessing authority were accepted by the Tribunal. These are all pure findings of fact.

8. The Revision Petition can be entertained and decided by this Court only if the Tribunal has failed to decide the questions of law or has decided the questions of law erroneously.

9. In the instant case, as we have already noticed, the First Appellate Authority and the Tribunal, purely based on the facts, have come to the conclusion that the estimation made by the assessing authority is on a higher side and, therefore, modified the assessment order. The findings of both the First Appellate Authority and the Tribunal are pure findings of fact. Therefore, in our opinion, the Revision Petition so filed by the Revenue, cannot be entertained by us, since it is not the case of the Revenue that the Tribunal has failed to consider a question of law or has considered the question of law erroneously. In that view of the matter, the questions of law framed by the Revenue are answered against the Revenue and in favour of the assessee.

Ordered accordingly.

**H.L. DATTU,
CHIEF JUSTICE**

**K. M. JOSEPH,
JUDGE**

kbk/DK.